

B-1

In the Matter Of:

UNITED STATES OF AMERICA v

GOOGLE, LLC

ARNAUD CREPUT

September 05, 2023



1 easy, but it was feasible or possible to
2 sell our serving solution.

3 So most of the publishers with
4 us are based out in New Hope. The core
5 countries we started earlier than the U.S.

6 So I can -- (undecipherable) --
7 and you mentioned this name [REDACTED]. We
8 lost [REDACTED]. We lost [REDACTED] in France.
9 We lost [REDACTED]. We lost [REDACTED] in Spain
10 and we come with this case later. So
11 [REDACTED], the Spanish one.

12 I was listing some of the
13 publishers we lost over the past 10 years.
14 So there was a big wave of publisher losses
15 in 2015, '16 and '17.

16 So I mentioned a few names.
17 There are many. I don't have all of them
18 in mind. So this is the one the translator
19 listed a few seconds ago.

20 What I was saying as well is
21 that we started in the U.S. in 2014. So we
22 started to operate in the U.S. in 2014. It
23 was at the time where it was already almost
24 impossible to sign a new publisher on the
25 ad server side.

1 So the goal was to replace
2 Google DFP with Google Ad Manager at scale
3 on the ad server side.

4 So we invested a lot in terms of
5 resources, especially in the U.S., to
6 convince publishers to move from Google to
7 Equativ.

8 At that time, we hired a sole
9 strategy advisor. His name is Greg Carman.
10 He's the former president of --
11 (undecipherable) -- in Brazil. So very
12 well-known and close to large publishers.

13 And with others resources, we
14 pitched many large publishers in the U.S.
15 market, including [REDACTED], including
16 [REDACTED], including [REDACTED]
17 [REDACTED], and many other names, so more than 25
18 Tier 1 publishers in the U.S.

19 So we had more than 25 shots and
20 no goal. Actually, [REDACTED]
21 [REDACTED]. Sometimes we were quite far
22 in the demonstration, in the test we
23 performed with the publishers.

24 Each time this was a no-go. For
25 one reason, it was never about product

1 A DV360 has a market share, which
2 is calculated between 50 and 60 percent.
3 The DV360 market share in our SSP,
4 Equativ's SSP, is below ■ percent. And
5 this comes from the self-preferencing
6 behavior of DV360 towards Google AdX.

7 A certain number of DV360
8 functionalities are not interoperable with
9 the other SSPs. Let me give you two
10 examples.

11 The first would be the consumer
12 match, which I mentioned earlier.

13 And the second would be the
14 guaranteed or the programmatic guaranteed
15 that doesn't work on all subjects with
16 competitors -- with competing SSPs.

17 Another example stems from the
18 fact that the agencies that use DV360 have
19 volume discounts with Google. And that
20 only works if the campaigns go through
21 Google AdX.

22 So Google then not only
23 incentivizes the agencies to use DV360, but
24 also to have their campaign go through
25 Google AdX. And this makes no difference

1 to the agencies.

2 Q How does Google DV360's
3 self-preferencing in favor of AdX affect
4 competition among SSPs?

5 MR. JUSTUS: Objection. Form.

6 BY MR. VERNON:

7 Q If at all.

8 THE INTERPRETER: One second.

9 This is the interpreter. Just one
10 second.

11 A Yeah, the impact is a very
12 significant loss of income for all -- the
13 impact is a very substantial, very
14 significant loss of income for all the SSPs
15 because the DV360 market share is above 50
16 percent. And this prevents competing SSPs
17 from achieving a critical size to lower
18 prices and innovate.

19 Q Overall, how easy or difficult
20 is it for Equativ's SSP to compete with
21 Google AdX?

22 MR. JUSTUS: Objection. Form.

23 A The Equativ SSP's market share
24 is [REDACTED]. We calculate it as being
25 around [REDACTED] percent.

1 If Equativ had more scale as an
2 SSP, how would that affect Equativ's
3 ability to compete with AdX, if at all?

4 MR. JUSTUS: Objection. Form.

5 A So Equativ has made a profit
6 from the very beginning. [REDACTED]

7 [REDACTED]

8 MR. JUSTUS: I'm sorry. We have
9 a clarification before you begin this
10 translation, if that's okay.

11 THE INTERPRETER: Go ahead.

12 CHECK INTERPRETER: I believe
13 the company is Equativ, with a V, V-E,
14 as opposed to Equative without the E.
15 I mean that's the name of the company.

16 THE INTERPRETER: Okay.

17 MR. VERNON: E-Q-U-A-T-I-V, I
18 think.

19 THE INTERPRETER: Equativ, okay.
20 The interpreter will say Equativ. Now
21 the interpreter will translate.

22 A Equativ has always reinvested
23 its profits into technology and
24 international expansion.

25 So if Equativ would have been

1 able to increase its growth on the ad
2 server in addition to growth on the SSP,
3 Equativ could have invested much more and
4 quicker both in technology and service to
5 its clients and in its international
6 expansion.

7 Equativ has always been an
8 extremely innovative company. Equativ
9 could have reached the scale so as to
10 maintain and to increase its investments.

11 This, in order to offer its
12 clients a viable alternative to Google to
13 its ad server and also to the SSP.

14 And the publishers could have
15 chosen their technological partners on
16 their servers, which is not the case today.

17 Q Why was Equativ not able to get
18 to this level of scale that you've been
19 discussing?

20 MR. JUSTUS: Objection. Form.

21 THE INTERPRETER: I'll be right
22 there.

23 A So between 2015 and 2022, the
24 sales revenue of Equativ's ad server went
25 from ■ to ■ million euros -- ■ to ■,

1 Equativ?

2 MR. JUSTUS: Objection. Form.

3 A A certain number of media
4 publishers tried that or did so in the
5 past. But this requires an extremely major
6 investment.

7 The ad server is the part of ad
8 technology which is the most strategic and
9 the part which is most complex in terms of
10 its maintenance.

11 The ad server manages all the
12 complexity of digital advertising, the
13 differences in format, in operating
14 systems, in terms of devices which are
15 constantly evolving.

16 The majority of independent
17 competing ad servers stopped. For example,
18 OpenX, O-P-E-N-X, and Verizon Media.

19 As far as Equativ is concerned,

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Q Let me ask you about Last Look.

24 Okay?

25 A Okay.

1 something which is absolutely unfair.

2 Q Let me ask you a different
3 question. Let me ask you about [REDACTED].
4 I'm going to try to speed this up a little
5 bit.

6 So [REDACTED] originally used DFP
7 as its publisher ad server, is that right?

8 MR. JUSTUS: Objection. Form.

9 A Yes. This is a Tier 1
10 publisher, the second largest publisher in
11 Spain, which used Google Ad Manager and a
12 year ago decided to migrate to Equativ.

13 In actuality, this is the most
14 important migration that we have conducted
15 over the last 5 years.

16 It took [REDACTED] one year to
17 decide to carry out this migration.

18 [REDACTED] studied all the functionalities of
19 our server to be sure that they were at par
20 with Google.

21 The migration took 6 months,
22 with a significant amount of effort both
23 from [REDACTED] and [REDACTED], with some
24 commercial conditions that were extremely
25 disadvantageous for Equativ.

1 The objective was to show all
2 the publishers that an alternative solution
3 could exist besides Google.

4 After a year, [REDACTED] decided to
5 go back to Google. This was last June.
6 The reason cited by [REDACTED] were all linked
7 to the anticompetitive behavior of Google.

8 In particular, the maintenance
9 of two ad servers is counter-productive.

10 The AdX mediation, in spite of
11 all our efforts, does not work as well as
12 it should.

13 And as I said earlier, certain
14 types of campaigns, especially the
15 programmatic guarantee, do not work
16 properly. And this stems from the lack of
17 interoperability of DV360 with competing ad
18 servers.

19 The programmatic guarantee works
20 well with competing DSPs such as the Trade
21 Desk.

22 THE INTERPRETER: And the
23 interpreters will now switch.

24 BY MR. VERNON:

25 Q So I think if you're done

1 with -- actually, one follow-up question on
2 [REDACTED].

3 You mentioned having to offer
4 [REDACTED] terms to get [REDACTED] to switch to
5 Equativ that you viewed as disadvantageous.
6 Can you just quickly list what those terms
7 were?

8 A So, for example, we provided
9 free access to our ad server for a long
10 period of time. We also covered [REDACTED]
11 migration fees.

12 THE INTERPRETER: So the
13 interpreter stands corrected.

14 A The migration cost concerning
15 the -- so concerning the migration cost
16 relative to the time needed by the teams or
17 the crews to conduct this migration, and
18 there was also the guarantee of minimum
19 revenue.

20 Q [REDACTED]
21 [REDACTED]

22 MR. JUSTUS: Objection. Form.

23 A [REDACTED]
24 [REDACTED]
25 [REDACTED]

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MR. JUSTUS: Objection. Form.

MR. VERNON: So now I think what makes most sense to me, I'm going to reserve the rest of our time for redirect and then probably take a quick break and then pass the witness to Google.

So if that makes sense, I think we can go off the record and do a quick break.

MR. JUSTUS: Yeah. So sorry, if you're passing the witness to us, we'll need a little bit more than a quick break. We'll take maybe 15 minutes and then we'll come back and do our questioning.

MS. ARYANKALAYIL: Okay with us.

THE VIDEOGRAPHER: We are now going off the record. The time is

1 A It was to better understand my
2 career at Equativ and my understanding of
3 the market situation.

4 Q Did you discuss many of the
5 topics that you've been asked questions
6 about today?

7 A The subjects were raised during
8 the first meeting in a very superficial
9 fashion.

10 Q Okay. Let's talk about the
11 second meeting. Who initiated that second
12 meeting?

13 A For the second meeting, we had
14 communicated with the Department of Justice
15 concerning the news about our client
16 ██████ and the DOJ proposed a meeting.

17 Q So you reached out affirmatively
18 to the DOJ to talk again?

19 MR. VERNON: Objection.

20 Mischaracterizes testimony, but go
21 ahead.

22 A Yes.

23 Q For this second meeting, which
24 you initiated with the DOJ, what do you
25 recall talking about?

1 MR. VERNON: Objection to form.

2 A Above all, we talked about the
3 [REDACTED] issue.

4 Q Did you also talk about other
5 topics for which the DOJ asked you
6 questions today?

7 A No.

8 Q What did you talk about other
9 than the [REDACTED] issue?

10 A For the second meeting, as far
11 as my memory is concerned, we almost
12 exclusively talked about [REDACTED].

13 Q Did you meet with the DOJ any
14 additional times in advance of your
15 deposition today?

16 A No.

17 Q You're sitting for this
18 deposition today in France, is that right?

19 A I'm in Brussels, in Belgium.

20 Q Did any foreign court order you
21 to sit for this deposition today?

22 THE INTERPRETER: Did you say
23 order you to sit?

24 MR. JUSTUS: Correct.

25 THE INTERPRETER: Okay.

1 for Equativ's business?

2 A This would seem to be necessary
3 to me in consideration of the numerous
4 conflicts of interest and the dominant
5 position of Google. But I think that this
6 would be good not for all the competitors,
7 including Equativ, and also for the
8 publishers.

9 Q When you say conflicts of
10 interest, what are you referring to?

11 A The first conflict of interest
12 is that Google was a media owner.

13 The second conflict of interest
14 is that it is dominant both on the demand
15 and the supply side and operates both sides
16 of the value chain.

17 Q Is that sometimes referred to as
18 having a full stack of ad tech products?

19 MR. VERNON: Object to the form.

20 A When we talk about full stack in
21 Equativ, for us that's AdServer and SSP.

22 Q Does Equativ also own a DSP.?

23 A Equativ acquired a DSP called
24 Liquidem in 2020. Today Equativ has a [REDACTED]
25 [REDACTED] share of its sales

1 revenue in the self-serve DSP.

2 Q Do you agree that Equativ
3 represents both advertising buyers and
4 publishers selling advertising?

5 MR. VERNON: Objection to form.

6 A In a certain sense, yes. But
7 the primary client of Equativ are the
8 publishers. The activity we have on the
9 demand side is weak to -- in order to bring
10 a little bit more demand to our publishers.

11 Q Is it a conflict of interest for
12 Equativ to represent both advertising
13 buyers and publishers?

14 A Equativ sales revenue from
15 self-serve DSP is less than █ percent of
16 our sales revenue. █
17 █.

18 THE INTERPRETER: The
19 interpreter is unsure of one word.

20 A █
21 █
22 █
23 █.

24 THE INTERPRETER: The
25 interpreters will now switch.

1 BY MR. JUSTUS:

2 Q Currently --

3 A [REDACTED]

4 [REDACTED]

5 [REDACTED].

6 Q So currently, Equativ does
7 operate both a DSP, an SSP, and an ad
8 server?

9 A Yes.

10 Q But it's a conflict of interest
11 when Google does the same thing?

12 A With the difference that Equativ
13 does not have any -- does not dominate
14 either end of the equation.

15 Q What are the benefits of having
16 a demand side platform, a supply side
17 platform, and an ad server at Equativ?

18 A The goal is to offer solutions
19 so that our clients, the publishers, can
20 buy directly. The goal is to offer the
21 publishers direct access and to reduce the
22 cost and to increase the transparency in
23 purchasing. I'm sorry, advertisers.

24 Q Does having a full stack of
25 products help protect against fraud?

1 MR. VERNON: Objection. Form.

2 A No. I think to prevent fraud,
3 it's important to have the tools of the
4 trade and there's a certain number of tools
5 that do exist.

6 Q What is Equativ's standard take
7 rate from publishers for open auctions
8 conducted through Equativ's SSP?

9 THE INTERPRETER: I'm sorry, did
10 you say take rate?

11 MR. JUSTUS: Yes.

12 A It's between ■ and ■ percent.

13 Q Some publishers pay a ■ percent
14 take rate?

15 A Yes.

16 Q Is that rate discounted if a
17 publisher agrees to also use Equativ's ad
18 server?

19 A It depends. These are business
20 terms that are negotiated with the client.
21 So it depends.

22 Q Sometimes does Equativ offer a
23 lower rate, a lower take rate, if a
24 publisher agrees to also use the Equativ ad
25 server?

1 A The answer is [REDACTED], [REDACTED]

2 [REDACTED]

3 [REDACTED].

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED].

8 Q How has Equativ's revenue
9 changed over the past 3 years?

10 A Over the last 3 years, Equativ's
11 sales revenue [REDACTED].

12 Q In 2022, did Equativ report
13 record net recurring revenue?

14 MR. VERNON: Objection to form.

15 A Equativ made an announcement
16 that the sales revenue was 92 thousand
17 million euros.

18 THE WITNESS: 92 million.

19 THE INTERPRETER: 92 million,
20 I'm sorry.

21 A This was the record.

22 Q How many daily auctions does the
23 Equativ SSP conduct, roughly?

24 A Approximately [REDACTED] billion.

25 Q Over the last year, has Equativ

1 increased the number of employees that it
2 has?

3 A Yes. In 2022, the answer is
4 yes, in a significant way. And in 2023,
5 this has stabilized.

6 Q What was the employee increase
7 in 2022?

8 A A little over 100.

9 Q What was Equativ's 2022 organic
10 growth rate?

11 A In 2022, it was ■ percent.
12 However, we must be careful because the
13 reference here, 2021, was still impacted by
14 COVID.

15 Q Was it ■ percent or ■ percent?

16 A ■.

17 Q You're sure about that?

18 A I guess I'm sure, but I can
19 check. I will tell you later. But to me,
20 it's 30 percent, yeah.

21 MR. JUSTUS: Can we bring up Tab

22 6?

23 (Exhibit 1, Internal Guidelines,
24 was remotely introduced and provided
25 electronically to the reporter, as of

1 So it says ■ percent plus
2 organic growth in 2022.

3 Did I read that right?

4 A That's what's written on the
5 slide, correct.

6 Q So you were mistaken earlier
7 when you said ■ percent?

8 MR. VERNON: Objection to form.

9 A Let me verify the source of the
10 document, the veracity of its content, and
11 I'll tell you which of the figures is
12 correct.

13 It's very possible this is a
14 document from 2022 anticipating the
15 year-to-date growth in 2023, which was the
16 case until -- which was the case at the end
17 of October.

18 Q Well, didn't we just look at a
19 slide that showed a 2023 event?

20 A That's true. Let me verify the
21 source of that document.

22 Q How many -- according to this
23 document, how many monthly auctions does
24 Equativ conduct?

25 A A billion daily. The monthly

1 SSP.

2 Actually, this rationalizes the
3 development efforts when the SSP was
4 launched. Currently, our sales revenue
5 from the ad server are [REDACTED]
6 [REDACTED].

7 Q So that didn't answer my
8 question.

9 What I'm asking you is, is it
10 your view that selling the SSP integrated
11 with the ad server produces a better
12 experience for publishers?

13 MR. VERNON: Objection to form.

14 THE INTERPRETER: The
15 interpreters will switch.

16 A Yes. Basically yes. But we
17 also sell them separately. We have
18 standalone ad server clients and we have
19 standalone SSP clients, and we're very
20 proud to have full stock clients, SSP and
21 ad server.

22 Q Thank you.

23 Can non-DFP ad servers access
24 what you call AdX demand?

25 A Through the AdX mediation term,

1 market share and had been in a downward
2 spiral for some years.

3 There was a 20 percent growth of
4 the SSP, and organic overall growth was 30
5 percent mainly powered by the new
6 solutions. That is to say curation, retail
7 media and connected TVs.

8 Q Let me break it down a little.

9 In the past 3 years, how have
10 Equativ's display ads -- publisher ad
11 serving revenues changed? Have they gone
12 up, or down, or stayed the same?

13 MR. JUSTUS: Objection. Form.

14 THE INTERPRETER: Could you
15 repeat that part?

16 MR. VERNON: Yeah. I don't
17 think you need to translate the
18 question.

19 THE WITNESS: It's clear.

20 A So what I was saying was that
21 the ad serving revenue was about [REDACTED]
22 million euros in 2015. It was [REDACTED] million
23 euros last year. And it will be close to [REDACTED]
24 million this year.

25 Q And then if you were to focus on

1 Do you remember that?

2 A Yes.

3 Q How do Equativ's open auction
4 SSP take rates compare to Google's?

5 A As far as I know, Google is
6 around 20 percent. Equativ is between [REDACTED]
7 and [REDACTED] percent below that.

8 Q Earlier counsel asked you
9 questions about whether you hoped DOJ would
10 win in this lawsuit.

11 Do you remember that?

12 A Yes.

13 Q And I think you said --

14 MR. JUSTUS: Sorry. Jeff, I'm
15 sorry to interrupt. Can we go off the
16 record a second?

17 MR. VERNON: Sure.

18 THE VIDEOGRAPHER: We are now
19 going off the record. The time is
20 11:34.

21 (Recess taken 11:34 a.m.)

22 (Resumed 11:35 a.m.)

23 THE VIDEOGRAPHER: We are now
24 back on the record. The time is
25 11:35.